UKIP PARLIAMENTARY RESOURCE UNIT

Judicial Accountability

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Introduction

UKIP believes in an independent judiciary, as we have enjoyed in our country for centuries.

It is no part of UKIP's approach to suggest that any judge should be removed because he or she takes a decision with which we or anyone else disagrees. The appeal process to higher courts safeguards our judicial process. Criticism by us or others of judgments with which we disagree do not threaten judicial independence.

Our system, where Parliament is sovereign, does have provision for a judge to be removed *in extremis* by a vote of both houses of parliament. However, it is a credit to the UK's constitutional arrangements that this power has not had to be used.

Historically, we have not had a complete separation of powers between executive, legislature and judiciary on the US model. Until 2009 our highest court of appeal sat as a Committee of the House of Lords. Prior to 2006 the Lord Chancellor was head of the judiciary and sat in Cabinet as well as in Parliament. Indeed, the Lord Chancellor heard cases sitting as a judge as recently as Lord Irvine of Lairg's term from 1997 to 2003.

Our judges are properly subject to many restraints. They do not stand above Parliament, and may not strike down its primary legislation. Nor do they sit above an entrenched written constitution.

In criminal cases, juries rather than judges determine innocence or guilt in many serious cases. For other cases a lay magistracy shares responsibility with legal advisors and professional district judges with whom they sit.

Independence of the judiciary implies that a judge should not be easily removed by the executive or legislature. It does not imply any particular model for organising courts or appointing judges.

For instance the Supreme Court was set up by statute, the Constitutional Reform Act 2005, legislation which of course can be amended. Section 23 provides:

> **23 The Supreme Court**
>
> (1) There is to be a Supreme Court of the United Kingdom.
>
> (2) The Court consists of 12 judges appointed by Her Majesty by letters patent.
>
> (3) Her Majesty may from time to time by Order in Council amend subsection (2) so as to increase or further increase the number of judges of the Court.
>
> (4) No recommendation may be made to Her Majesty in Council to make an Order under subsection (3) unless a draft of the Order has been laid before and approved by resolution of each House of Parliament …

The Supreme Court only commenced work on 1st October 2009. It is also notable that the Supreme Court was included on the list of bodies which the 2010-15 coalition government considered merging or abolishing as part of its proposed 'bonfire of the quangos'.

Senior judicial appointments

While we require our judges to have substantial experience of legal practice, or similar, usually as a barrister of at least seven years, other countries recruit graduates direct to a judicial profession, e.g. Sweden. In the US federal judges are appointed by the President, subject to confirmation by the Senate.

Prior to commencement of the Constitutional Reform Act 2005 the Lord Chancellor was responsible for judicial appointments, at least in England and Wales. In practice decisions were generally made on the recommendation of other senior judges, but not always.

Traditionally in the UK, senior judicial appointments have not tended to be politically controversial. Our model was that reticence and restraint in the exercise of powers by judges was matched by a degree of deference to their expertise.

The current President of the Supreme Court expressed concern on establishment of the Court that there was a real risk of "judges arrogating to themselves greater power than they have at the moment"[1].

If this is perceived to have come to pass, then it is not unreasonable to expect greater democratic oversight of senior judicial appointments.

We do not propose any radical upending of current arrangements for senior judicial appointments. We do though believe there is a case for some increase in democratic input, beyond the current right of the Lord Chancellor to reject an initial recommendation, including for appointment to the Supreme Court.

Providing a limited degree of democratic input at the point of appointment of senior judges should bolster the authority and independence of our judiciary. The only two obvious alternatives are appointment by quango, or accepting that our judiciary should be a self-replicating oligarchy. Our current practice lies between those two options, although one suspects that lay deference to the most senior judges leaves it closer to the second.

[1] Lord Neuberger of Abbotsbury BBC Radio 4 'Top Dogs: Britain's new supreme court' 8/9/2009 as quoted by Joshua Rozenberg BBC Online

Supreme Court appointments

Currently, recommendations to fill vacancies on the Supreme Court are made by a selection commission of five. It is composed of the President and Deputy President of the Supreme Court and three members from Judicial Appointments Commissions/Boards, one from England and Wales, one from Scotland and one from Northern Ireland.

We are concerned that this make-up for selection commissions gives excessive weight, some 40%, to Scotland and Northern Ireland (but not to Wales), and no democratic oversight.

We therefore propose to replace the commission members from the Scottish Judicial Appointments Board and the Northern Ireland Judicial Appointments Commission with:

1. The Chairman of the Justice Select Committee; and
2. A person appointed jointly by the First Ministers of Scotland, Wales and Northern Ireland.

Judicial Appointments Commissioners

The Judicial Appointments Commission for England and Wales is made up of 15 Commissioners appointed under the Judicial Appointment Commission Regulations 2013.

Each Commissioner is appointed by a panel of four set up under the Regulations. A panel chairman is appointed by the Lord Chancellor, generally with the agreement of the Lord Chief Justice, who is the second member of the panel. The third member is appointed by the chairman of the panel and the fourth member is the Chairman of the Judicial Appointments Commission.

Currently the Regulations provide "**13** (11) A person must not be the first member if he or she is one of the following— … (e)a member of the House of Commons (12) A person must not be the third member if that person is a member of the House of Commons."

We would reverse those anti-democratic provisions and replace the panel members to which they refer with:

1. The Chairman of the Justice Select Committee; and
2. An MP elected by secret ballot from the other largest party in the House of Commons.

This would give a balance between two elected Members on each panel and the Chairman of the Judicial Appointments Commission and Lord Chief Justice. It would also give opposition MPs a role, unlike the current system, where only the Lord Chancellor is involved.

Lord Chief Justice, Heads of Division and Court of Appeal appointments

Currently these appointments are made by panels constituted by the Lord Chief Justice, a further senior judge, the Chairman of the Judicial Appointments Commission and a further lay member of the Commission. We propose replacing the further senior judge and the further lay member of the Commission with:

1. The Chairman of the Justice Select Committee; and
2. An MP elected by secret ballot from the other largest party in the House of Commons.

High Court appointments

The Judicial Appointments Commission must carry out statutory consultation as part of its selection process for High Court judges. It states[2] that it will consult "a person (other than the Appropriate Authority) who has held the office that candidates are applying for, or someone who has other relevant experience … For High Court selection exercises, the consultees are likely to be the Lord Chief Justice and one other person".

We propose to replace this practice with a requirement that, while undertaking a selection, the Commission consult the Lord Chief Justice and the Chairman of the Justice Select Committee.

General considerations

We support the requirements of the Constitutional Reform Act on the Judicial Appointments Commission to:

- select candidates solely on merit;
- select only people of good character; and
- have regard to the need to encourage diversity.

However, greater diversity must not be at the expense of merit. It should also mean greater diversity of viewpoint and social background, not just greater diversity of protected characteristics under the Equality Act.

Judges will of course be concerned about how their judgments are received. Most often, any commentary will be confined to academics and lawyers practicing in particular fields, but sometimes judgments provoke wider public or political controversy.

If a judge applies for promotion to the High Court or above we believe that it is reasonable, in considering merit, for panels to assess past judgments and consider how applicants respond at interview in this respect.

[2] https://jac.judiciary.gov.uk/statutory-consultation

Other judicial changes

Reform of the Sentencing Guidelines Council

In a criminal context judicial independence in a democracy generally requires that the legislature sets out what constitutes a criminal offence and the penalties generally applicable, while judges have discretion in a particular case to determine what penalty to apply within the available range.

The reality in England and Wales is that criminal judges and magistrates have in practice had their discretion increasingly limited by the Sentencing Guidelines Council, even if judges may deviate from guidelines in the interests of justice, subject to giving detailed explanatory reasons for doing so.

The Sentencing Guidelines Council is a quango made up of a mix of judicial and lay members. It describes its relationship with Parliament as follows:

"The Council is accountable to Parliament for the delivery of its statutory remit set out in the Coroners and Justice Act 2009 … The Council has a statutory requirement to consult with Parliament. This includes regular appearances before the House of Commons Justice Select Committee. In addition to this, the work of the Sentencing Council has also been open to further scrutiny in the form of a wide ranging sentencing debate in the House of Commons led by the Lord Chancellor and Secretary of State for Justice."

We are not convinced that this accountability is sufficient, given the nature of what the Council does. We propose that Council members should be subject to confirmation by the Justice Select Committee. We would also welcome less detailed, technical and prescriptive guidance, so as to allow greater discretion for individual judges and magistrates.

Empowering magistrates

UKIP strongly supports our lay magistracy which, together with trial by jury, connects our justice system to the people, rather than their being subject solely to a professional judiciary.

We want to empower magistrates further, rather than increasingly shift power to district judges sitting as stipendiary (i.e. paid) magistrates.

We are also extremely concerned by delays in the court system. Problems with listing and case management are exacerbated by too many cases overall going to the Crown Court. More could be dealt with by magistrates while maintaining rights to a jury trial.

To empower magistrates and speed up the court system, we propose to:

1. Commence sections 154 and 155 of the Criminal Justice Act 2003 to increase sentencing power of magistrates from six months to twelve, (and to fifteen for multiple 'either-way' offences);
2. Require such 'either-way' offence, if the defendant does not elect jury trial, to be heard by a panel of two lay magistrates and a district judge; and
3. Allow a single magistrate, with at least three years of experience as a day chair, to hand down non-custodial sentences to guilty pleas on summary matters.